

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BENJAMIN J. KOZIK, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

HAMILTON COLLEGE,

Defendant.

Civil Action No. 6:12-CV-870 (LEK/TWD)

ECF CASE

**DECLARATION OF ROBERT W. OTTINGER IN SUPPORT OF PLAINTIFF'S
MOTION FOR CONDITIONAL COLLECTIVE ACTION CERTIFICATION, COURT-
AUTHORIZED NOTICE PURSUANT TO SECTION 216(b) OF THE FLSA, AND
DISCOVERY OF NAMES OF OTHER POTENTIAL PLAINTIFFS**

I, Robert W. Ottinger, declare, upon personal knowledge and under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am the owner and principal of The Ottinger Firm, P.C., attorneys for Plaintiff, and an attorney in good standing admitted to practice in the State of New York and before this Court. I make this declaration in support of Plaintiff's Motion for Conditional Collective Action Certification, Court-Authorized Notice Pursuant to Section 216(b) of the FLSA, and Discovery of Names of Other Potential Plaintiffs.

Procedural History

2. On December 20, 2012, Named Plaintiff Benjamin J. Kozik ("Plaintiff") filed a Collective and Class Action Complaint and Jury Trial Demand (the "Complaint") against Hamilton College pursuant to Federal Rule of Civil Procedure 23 and 29 U.S.C. § 216(b) in the United States District Court for the Northern District of New York on behalf of himself and others who are similarly situated. Plaintiff sought recovery of minimum and overtime wages,

attorneys' fees and costs, interest, liquidated damages, and injunctive and declaratory relief. A true and correct copy of the Complaint is attached hereto as Exhibit A.

3. On March 25, 2013, Defendant Hamilton College ("Defendant" or "Hamilton") filed its Answer with affirmative defenses disputing the material allegations in the Complaint and denying any liability in the proposed class and collective action. A true and correct copy of the Answer is attached hereto as Exhibit B.

4. To date, the parties have engaged in limited discovery, including the exchange of certain documents, including over 120 pages marked "Highly Confidential" concerning the meal plan terms and pricing which, among other things, invoice Hamilton for the cost of meals for Interns. See Ex. W, infra. Given the production of the bulk of these materials just one business day before the filing of this motion and the terms of the Stipulated Protective Order between the Parties, there was insufficient time to request Defendant's consent to attaching such documents to this Motion. (ECF No. 22 at ¶ 6.)

5. No depositions have been taken in this action.

Exhibits

6. Attached as Exhibit C are true and correct copies of an appointment letter dated July 30, 2010, from Jon Hind, Director of Athletics, Hamilton College, to Benjamin J. Kozik, produced by Defendant and bearing Bates Nos. D000121 and D000157.

7. Attached as Exhibit D is a true and correct copy of an appointment letter dated May 27, 2011, from Jon Hind, Director of Athletics, Hamilton College, to Benjamin J. Kozik, produced by Defendant and bearing Bates No. D000122.

8. Attached as Exhibit E is a true and correct copy of an appointment letter dated June 27, 2011, from Jon Hind, Director of Athletics, Hamilton College, to Benjamin J. Kozik, produced by Defendant and bearing Bates No. D000123.

9. Attached as Exhibit F is a true and correct copy of an appointment letter dated May 17, 2012, from Jon Hind, Director of Athletics, Hamilton College, to Benjamin J. Kozik, produced by Defendant and bearing Bates No. D000124.

10. Attached as Exhibit G are true and correct copies of an appointment letter dated July 27, 2012, from Jon Hind, Director of Athletics, Hamilton College, to Benjamin J. Kozik, produced by Defendant and bearing Bates Nos. D000125 and D000170.

11. Attached as Exhibit H is a true and correct copy of a “Special Pay Authorization Form” bearing Defendant’s logo and listing four (4) payments of \$500.00 each to Ben Kozik for “Assisting with Women’s Basketball, in addition to normal duties. (Dec 1, 2011 – March 31, 2012)” produced by Defendant and bearing Bates No. D000127.

12. Attached as Exhibit I is a true and correct copy of a document with a top line heading, “Athletics New Hires – Under 50% Work Schedule” for Benjamin Kozik with the handwritten note, “Football Intern” produced by Defendant and bearing Bates No. D000158.

13. Attached as Exhibit J is a true and correct copy of a letter dated February 21, 2012 from Samantha Campione, Human Resources Assistant, Hamilton College, to Oneida County Department of Social Services confirming Benjamin J. Kozik’s monthly salary, produced by Defendant and bearing Bates No. D000171.

14. Attached as Exhibit K is a true and correct copy of an e-mail chain among Stephen Stemkoski, Samantha Cavanaugh, and Benjamin Kozik dated February 15-20, 2012 regarding “potential temporary assistance since [Kozik] may be considered a ‘low income

individual”” and confirming Kozik’s monthly salary, produced by Defendant and bearing Bates Nos. D000172-173.

15. Attached as Exhibit L is a true and correct copy of a “Hamilton College Football Staff Manual 2012” produced by Defendants and bearing Bates Nos. D000211-244.

16. Attached as Exhibit M is a true and correct copy of an undated document entitled “Coaches Responsibilities” produced by Defendants and bearing Bates No. D000339.

17. Attached as Exhibit N is a true and correct copy of an e-mail received by Benjamin J. Kozik and sent to all Interns in the Athletics Department from Kim Hutchins, Senior Assistant, Athletic Office, Department of Athletics, Hamilton College regarding choice of meal plan or monetary compensation, produced by Plaintiff and bearing Bates No. P0160. The substance of this email, and the computer malfunction that affected the form of its production, is explained by Plaintiff Benjamin J. Kozik in his Declaration (Ex. P ¶ 17).

18. Attached as Exhibit O is a true and correct copy of information from the Hamilton College website regarding varsity sports and located at.
<http://www.hamilton.edu/athletics/varsity>.

19. Attached as Exhibit P is a true and correct copy of the Declaration of Benjamin J. Kozik, dated June 17, 2013

20. Attached as Exhibit Q is a true and correct copy of the Declaration of Kate DeSorrento, dated June 14, 2013

21. Attached as Exhibit R is a true and correct copy of the Declaration of Jimmy Sutton, dated June 17, 2013.

22. Attached as Exhibit S is a true and correct copy of the proposed Court Authorized Notice and accompanying proposed Consent to Join Form.

23. Attached as Exhibit T is a true and correct copy of Game Management documents scheduling Interns for Game Management duties produced by Defendant and bearing Bates Nos. D000001-16.

24. Attached as Exhibit U is a true and correct copy of a Payroll Master Form summarizing all compensation received by Benjamin J. Kozik throughout his employment and identifying his “Primary Position” as “Intern Phys Ed” produced by Defendant and bearing Bates Nos. D000117-119.

25. Attached as Exhibit V is a true and copy of Hamilton College “Staff Handbook”, dated April 2003 and Revised February 2006, available at http://www.hamilton.edu/documents//human-resources/staff_handbook.pdf.

26. Attached as Exhibit W are true and correct copies of correspondence dated June 12, 2013 and June 13, 2013 from Defendant’s counsel, Clifford G. Tsan, to me referencing the production of meal plan records designated as “Highly Confidential.”

I declare under penalty of perjury that the above statements are true, accurate, and based on my personal knowledge of the facts and issues in this case.

Dated: June 17, 2013
New York, New York

/s/
Robert W. Ottinger